

STATE OF INDIANA)	IN THE LA PORTE CIRCUIT COURT
) SS:	
COUNTY OF LA PORTE)	2021 TERM
		46C01-2104-CT-000867
		CAUSE NO. _____
FRANKLIN J. HOSTETLER,)	
Plaintiff)	
vs.)	
JOHN THACKRAY; MSA)	
SAFETY SALES, LLC and)	
MSA SAFETY, INC.,)	
Defendants)	

COMPLAINT

Comes now the Plaintiff, Franklin J. Hostetler, in the above entitled and numbered cause of action, and files his complaint against Defendants, Driver, John Thackray, and MSA Safety Sales, LLC and MSA Safety, Inc., and in support of his complaint respectfully shows to the Court as follows:

1. Parties

1.01 Plaintiff, Franklin J. Hostetler, was at all times material to this cause of action, a resident of La Porte County, State of Indiana.

1.02 Defendant driver, John Thackray, was at all times material to this cause of action an individual and resident of Pittsburg, State of Pennsylvania, and an employee of Defendants, MSA Safety Sales, LLC and/or MSA Safety, Inc.

1.03 Defendant, MSA Safety Sales, LLC, at all times material to this cause of action, was a Pennsylvania LLC doing business in Indiana and registered in Indiana with its resident agent being CT Corporation System, 334 North Senate Avenue, Indianapolis, IN 46204, USA.

1.04 Defendant, MSA Safety, Inc., at all times material to this cause of action, was a Pennsylvania corporation doing business in Indiana.

2. **Jurisdiction and Venue**

2.01 This Court has jurisdiction and venue over the general class of proceedings to which this cause of action belongs, to-wit: tort action, complaint for negligence and personal injury and property loss arising from a vehicle collision which occurred in La Porte County, Indiana on Sunday, June 9, 2019.

3. **Factual Background**

3.01 On Sunday, June 9, 2019, Defendant driver, John Thackray, while in the course and scope of his employment for and with Defendant LLC, MSA Safety Sales, LLC, and/or Defendant corporation MSA Safety, Inc., was driving northbound on U.S. Highway 35 just north of Johnson Road in La Porte County, Indiana.

3.02 While Defendant driver, John Thackray, was driving northbound on U.S. 35 just north of Johnson Road, he crossed the center line causing his vehicle to occupy the southbound lane of U.S. 35 and struck Plaintiff, Franklin J. Hostetler, head on.

3.03 On Sunday, June 9, 2019, Plaintiff, Franklin J. Hostetler, was driving his vehicle southbound on U.S. 35 just north of Johnson Road in La Porte County, Indiana, when defendant driver, John Thackray, came into the southbound lane and struck Plaintiff head on.

3.04 On Sunday, June 9, 2019, there was a head on collision between the vehicle being driven by Defendant driver, John Thackray, and the vehicle being driven southbound on U.S. 35 by Plaintiff, Franklin J. Hostetler, in La Porte County, Indiana.

3.05 The collision impact that occurred on Sunday, June 9, 2019, between the vehicle driven by Defendant, John Thackray, and the vehicle driven by Plaintiff, Franklin J. Hostetler, caused Plaintiff, Franklin J. Hostetler to suffer serious and permanent injuries and property loss.

4. **Causes of Action: Defendant/Driver, John Thackray**
Defendant LLC/MSA Safety Sales, LLC
Defendant Corporation, MSA Safety, Inc.

4.01 Respondeat Superior

Defendants, MSA Safety Sales, LLC and MSA Safety, Inc., are vicariously liable for the damages proximately caused Plaintiff, Franklin J. Hostetler, by the conduct of Defendant driver, John Thackray, on June 9, 2019, as Defendant driver, John Thackray, was acting within the course and scope of his employment when the conduct occurred.

4.02 Defendants, MSA Safety Sales, LLC and MSA Safety, Inc., on June 9, 2019, were doing business in Indiana and their employee was using the streets, roads and highways of the State of Indiana in La Porte County in furtherance of his employment with MSA Safety Sales, LLC and/or MSA Safety, Inc.

4.03 **Negligence**

On Sunday, June 9, 2019, Defendant driver, John Thackray, was negligent and failed to exercise the ordinary care a reasonable and prudent person would have done under the same or similar circumstances by among other things:

- A. Making an improper and unsafe passing of other vehicles;
- B. Failing to control his vehicle under the conditions;
- C. Failing to keep a proper lookout;
- D. Failing to keep his vehicle under control;
- E. Operating his vehicle while intoxicated;
- F. Failing to adhere to traffic rules of the road;
- G. Failing to yield right of way;
- H. Other acts of negligence.

4.04 On September 13, 2019, Defendant driver, John Thackray, in La Porte Superior Court No. 3 in Cause No. 46D03-1906-CM-1683, admitted that he had operated his vehicle while intoxicated, June 9, 2019, and pled guilty to the charge of Operating his Vehicle While Intoxicated.

4.05 On Sunday, June 9, 2019, Defendant driver, John Thackray, was taken to La Porte Hospital by La Porte County Sheriff Deputy J. Samuelson, where a La Porte Hospital Lab Phlebotomist conducted a blood draw on Defendant driver, John Thackray, which resulted in 0.246 grams of alcohol per 100 milliliters of blood.

4.06 **Causation**

As a direct and proximate result of the negligence of the Defendant driver, John Thackray, such acts caused the collision on Sunday, June 9, 2019, and the resulting injuries, damages and loss sustained by Plaintiff.

5. **Damages**

5.01 As a direct and proximate result of the negligence of the Defendant driver, John Thackray, Plaintiff, Franklin J. Hostetler, sustained personal injuries, some of which are permanent. He has endured physical pain and mental suffering as a result of his injuries and is reasonably certain to experience future physical pain and mental suffering. He has lost time as a result of his injuries. He has incurred expenses for medical care, treatment and services and will incur future expenses for medical care, treatment and services. He has suffered disfigurement and/or deformity as a result of his injuries. Plaintiff also had property loss.

WHEREFORE, Plaintiff, Franklin J. Hostetler, prays for judgment against defendants, MSA Safety Sales, LLC and MSA Safety, Inc., and the Defendant driver, John Thackray, singularly and jointly for sums which will fairly and reasonably compensate him for his loss and damages, for prejudgment interest at the legal rate, costs of this action and all other just and proper relief in the premises.

6. **Punitive Damages**

6.01 Plaintiff, Franklin J. Hostetler, realleges rhetorical paragraphs 1.01 through 5.01 of this Complaint for damages as if they were fully set forth herein by reference.

6.02 Defendant driver, John Thackray's, conduct/actions on June 9, 2019 amounted to willful and wanton misconduct and/or Defendant acted with gross negligence with reckless disregard of the consequences to another person and/or done with reckless disregard of probable injury to another person when Defendant driver, John Thackray, knew of that probability of injury.

WHEREFORE, Plaintiff prays for judgment of punitive damages against Defendant driver, John Thackray, in an amount that will be adequate to punish Defendant for what he did to Plaintiff and deter and discourage Defendant and other persons from similar acts in the future, for attorney fees, costs of this action and all other just and proper relief in the premises.

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DEMAND FOR TRIAL BY JURY

Plaintiff demands trial by jury.

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